IN THE HIGH COURT AT CALCUTTA

CRIMINAL APPELLATE JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 99 OF 2007

PREMIER MEDICAL SUPPLY STORES PROPRIETOR

PREMIER DISTRIBUTORS CACUTTA (P) Ltd.

VS

THE STATE OF WEST BENGAL & ORS.

For the Respondent no. 2 : Mr. Ayan Bhattacharjee, Sr. Adv.

Mr. Suman Mazumdar, Adv.

Mr. Chandrachur Banerjee, Adv.

Last heard on	**:**	**04.02.2026**
Judgement on	**:**	**08.05.2026**
Uploaded on	**:**	**08.05.2026**

CHAITALI CHATTERJEE DAS:-

1. This is an application under Section 378(3) of the Code of Criminal Procedure, 1973 against an judgement and order of acquittal dated 30.6.2006 delivered by the learned Metropolitan Magistrate, 5th Court, Calcutta in case no. 672/95 corresponding to T.R number 352/95, under Section 138/141 of Negotiable Instrument Act .

Brief resume of the case

2. It is the case of the present petitioner that on the basis of a complaint filed on behalf of the complainant /petitioner under Section 138 read with Section 141 of the Negotiable Instrumental Act before the learned Chief Metropolitan Magistrate, Calcutta, the complaint case was initiated against the present respondent and the cognizance was taken and transferred the case to the court of learned Metropolitan Magistrate, 5th Court, Calcutta for enquiry, trial and disposal. The allegations made in the petition of complaint were as follows; The accused No.1 a partnership firm and accused no. 2 to 4 are the partners of the accused no.1 and responsible for the day-to-day conduct of the business of the accused no.1. The accused persons in discharge of their liabilities issued an account pay cheque dated 28.3.1995 amounting to ₹1, 89, 363.54 paisa drawn on United Bank of India, Santoshpur Branch, Kolkata -7000 32.

3. The complainant duly presented the said cheque with its banker at Kolkata Main branch, but the said cheque was returned on 25.4.1995, with the remark insufficiency of funds, as there was no sufficient money in the account of the accused to honour the cheque. It was further alleged that the complainant thereafter send a notice on 4.5.1995, intimating about the dishonour of the said cheque and thereby called upon the accused persons to pay the sum of ₹1, 89, 363.54p within 15 days from the receipt of the said notice. The accused persons received the said notice on 6.5.1995, 8.5.1995 and 10.5.1995, however, they ignored to pay any amount towards the dishonoured cheque . It was further alleged that accused persons issued the said Cheque in discharge of its existing liability and the same was returned dishonoured for insufficiency of funds, and in spite of demand, they refused to pay and as such made themselves liable to be prosecuted under section 138, read with section 141 of the Negotiable Instrument Act.

4. The learned Metropolitan Magistrate 5th court, Calcutta after hearing arguments passed the order of acquittal against which a criminal appeal no. 355 of 2001 was filed before this court and by the judgement and order dated 4.1.2006 allowed the appeal by setting aside the order of acquittal passed by the learned Metropolitan Magistrate and remand back case to the same court. On remand the learned Magistrate after hearing the arguments advanced on behalf of the complainant and the accused persons again passed the order of acquittal. Being aggrieved thereby this Special leave to Appeal has been filed. In this case, despite administrative notice served upon the petitioner none responded and accordingly, Mr Soham Banerjee was engaged as Amicus Curiae.

<u>Submission</u>

5. The Learned amicus curiae argued that the learned Magistrate did not consider that the cheque in question was issued in discharge of legally enforceable, debt and liabilities, and the earlier judgement of the same court did not dispute the issuance of cheque in discharge of legally enforceable debt or liability and the view taken by the court on the previous occasion was set aside by the High Court at Calcutta in the criminal appeal filed challenging the said order of acquittal. It was incorrectly held by the learned Magistrate that the complainant had been successful in proving the cheque in question issued in discharge of legally enforceable debt and liabilities, and while acquitting, the authenticity of the issuance of the cheque was not disputed but merely relied upon the fact that the complainant had no authority to file the complaint. The jural relation of the complainant with the premier medical supplies and stores is not established in court of trial or in title of the petition of complaint, which is bad in law, illegal and perverse as observed by the learned Magistrate and was erroneous. Accordingly, prayed for setting aside the order of acquittal.

6. The Learned Senior Advocate Mr. Ayan Bhattacharjee at the outset argued that the alleged case was started about 30 years back and speedy trial, early, hearing and quick disposal are the sine qua none of criminal jurisprudence and the prolong delay itself can be a ground for non-consideration of the appeal .In this regard relied upon the decision of the Hon'ble Supreme Court in ***State of Punjab versus Ajaib Singh***[1] It is further assailed that partners cannot be convicted in absence of conviction of firm/company and relied upon the decisions reported in ***State of Madras versus C.V Parekh and Anr.***[2] (Paragraph 3).

7. The Learned Senior Advocate further relied upon the judgement of ***Aneeta Hada versus Godfather Travels and Tours Pvt Ltd.***[3] on the similar point where the Hon'ble Supreme Court held in paragraph 32:

> *"32. We have referred to the aforesaid authorities to highlight that the company can have criminal liability and further, if a group of persons that guide the business of the companies have the criminal intent, that would be imputed to the body corporate. In this*

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[1] (1995) 2 SCC 486
[2] (1970) 3 SCC 491
[3] (2012) 5 SCC 661

backdrop, Section 141 of the Act has to be understood. The said provision clearly stipulates that when a person which is a company commits an offence, then certain categories of persons in charge as well as the company would be deemed to be liable for the offences under section 138. Thus, the statutory intendment is absolutely plain. As is perceptible, the provision makes the functionaries and the companies to be liable and that is by deeming fiction. Deeming fiction has its own signification."

In paragraph 58 it was held:

> *"58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words " as well as the company" appearing in the section, make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof . One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted."*

8. It was further argued that no interference to be made unless the order or view of the trial court is perverse .In this regard relied upon the case of

Dhanpal versus State By Public prosecutor Madras[4] in para 39, where it was observed and held:

> *"39. The following principles emerge from the cases above:*
>
> *1) The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.*
>
> *2) The power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the appellate court must give due weight and consideration to the decision of the trial court.*
>
> *3) The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.*
>
> *4) The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.*
>
> *6) If two reasonable or possible views can be reached- one that leads to acquittal, the other to the conviction- the High Courts/appellate courts must rule in favour of the accused……….*

[4] (2009) 19 SCC 401

41. The settled legal position as explained above is that if the trial court's view is possible or plausible, the High Court should not substitute the same by its own possible view……"

9. It is further argued that the complaint under section 138 of the Negotiable Instrument Act, 1881 is valid only if the attorney has proper authority as in this case the complainant is the CEO and proprietor of another firm and authorised by the Director of the Complainant Company. In this regard, the decision relied upon In ***A. C. Narayanan versus State of Maharashtra and Anr.***[5] where in para 30, it was held and observed that:

"30. In the light of the discussion, we are of the view that the power-of-attorney holder may be allowed to file, appear and depose for the purpose of issue of process for the offence punishable under Section 138 of the NI Act. An exception to the above is when the power of attorney holder of the complainant does not have a personal knowledge about the transactions then he cannot be examined. However, where the attorney holder of the complainant is in charge of the business of the complainant payee and the attorney holder alone is personally aware of the transactions, there is no reason why the attorney holder cannot depose as a witness. Nevertheless, an explicit assertion as to the knowledge of the power of attorney holder about the transaction in question must be specified in the complaint. On this account, the fourth question becomes infructuous.

[5] (2014) 11 SCC 790

………

33.2. The power of attorney holder can depose and verify on oath before the court in order to prove the contents of the complaint. However, the power of Attorney holder must have witnessed the transaction as an agent of the payee / holder in due course or possess due knowledge regarding the said transactions.

33.3 It is required by the complainant to make specific assertion as to the knowledge of the power of attorney holder in the said transaction explicitly in the complaint and the power of attorney holder who has no knowledge regarding the transactions cannot be examined as a witness in the case."

10. The Learned Senior advocate further assailed the law laid down regarding blank cheque vis-a-vis section 138 of N.I Act and relied upon the decision of the Hon'ble Supreme Court in in ***K. Ramesh versus K. Kothandaraman*** [6]. Accordingly prayed for dismissal of the Appeal.

After hearing the Learned Counsels and going through the materials it is seen that the moot question to be decided whether the judgement of acquittal is perverse or whether it was rightly passed.

Analysis

11. In this case, the complaint was lodged by the complainant being the authorised representative of Premier Medical Supplies and Stores, proprietor

[6] (2024) 12 SCC 82

Premier distributors Private Limited against M/s. Pharma Traders and its 3 partners. The accused persons were alleged to have issued the cheque, totalling a sum of Rs.1, 84, 363.54 drawn on UBI, Santoshpur Branch, which was presented within the validity period, and it was dishonoured on 25.4.1995 for insufficiency of fund. The witnesses were examined and several documents were proved and accused persons were also examined under Section 313 Cr.P.C. The defence cited the complainant as defence witness. It was the definite case of the accused that a blank cheque was issued and delivered to as 'security' for the realisation of the debts and liabilities of the accused for medicines supplied to them by the complainant concerned which was filled up and the amount was inserted without the consent and knowledge of the accused persons.

12. The learned Magistrate while deciding the case for the second time on the issue that whether the cheque was issued in discharge of debt and liabilities of the accused person observed that from the evidence on record, it was found that the medicines were sold and supplied to the accused firm from time to time and the payments were received from time to time were credited to their account, but there is no evidence to the effect that if final settlement of accounts took place between both the parties and the final dues of the accused firm was ascertained in presence of both the parties without such final settlement of accounts and the complainant unilaterally put an amount in the blank cheque and presented the same for encashment. In such circumstances, the complainant cannot get the benefit of presumption under section 139 and therefore held that the complainant failed to prove that the cheque amount was due and payable by the accused person. This court is unable to concur with such observation in view of the fact that at no point of time the complainant raises the issue disputing the amount on the ground of final settlement of bills between the parties and point of final settlement was never assailed. On the contrary it was admitted by the accused persons that the cheque was issued by them in respect of the amount mentioned in the invoice raised for supply of medicine.

13. The judgement and order of acquittal was passed predominantly on the point that that a blank cheque was given as security deposit for their business transaction, and without having any final settlement, the complainant filled up the amount and placed the same, and therefore the complainant failed to produce any document to prove the cheque amount was due and payable by the accused persons to the complainant. So there was failure on the part of the complainant to establish that the cheque was issued in discharge of the debts or liabilities of the accused person. In view of the decisions as relied upon by the learned Senior advocate passed by the Hon'ble Supreme Court in ***K. Ramesh (supra)*** where taking note of the decision of ***Bir Singh versus Mukesh Kumar***[7] the Hon'ble Supreme Court observed that a person who signs a cheque and makes it over to the payee remains liable unless he uses evidence to revert the presumption that the cheque was issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque was filled up by any person, other than the drawer if the cheque is duly signed by the drawer. In para 4 it was held:-

[7] (2019) 4 SCC 197

*"4. In this regard our attention was drawn to paras 32, 33, 34 and 36 of the judgement in **Bir Singh versus Mukesh Kumar, (2019) 4 SCC 197,** wherein it has been observed that even if a blank cheque leaf is voluntarily signed and handed over by the accused towards some payment would attract the presumption under section 139 of the Act and in the absence of any cogent evidence to show that the cheque was not issued in discharge of the debt, the presumption would hold good. The said paras are extracted below :*

"32. The proposition of law which emerges from the judgements referred to above is that the onus to rebut the presumption under section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post-dated does not absolve the drawer of a cheque of the penal consequences of section 138 of the negotiable instrument Act.

33. A meaningful reading of the provisions of the Negotiable Instruments Act, including in particular, Section 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the *cheque is otherwise valid, the penal provisions of section 138 would be attracted.*

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the Payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the said cheque was not in discharge of a debt or liability by adducing evidence.

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36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."

14. In this case, the evidence adduced by the complainant was placed before the accused persons and the partner of Respondent No1 Firm Smt. Shikha Dutta admitted that she issued a cheque bearing number 014123 dated 28.3.95 of an amount of ₹1,84,363 .54 paisa of the complainant company, and she admitted her signature on the cheque. The other partner, Vidhu Ranjan Dutta also admitted that such cheque was issued and it contains his signature. The third partner, Moni Roy could not say exactly whether any such cheque was signed by them or not. However, all of them denied about the allegations levelled against them without making any other statement. Jagdish Chandra Gupta the authorised representative and an employee under the

Premier Medical Supplies and Stores – Proprietor Premier Distributors, Calcutta Pvt Ltd and a Chief accountant was also cited as the defence witness and from his evidence it can be gathered that Mr Joy Gopal Banerjee was the Director of Premier Distribution Private Ltd who authorised him to file the case as a Director of the complainant company only to represent the company and he issued the demand notice and the payee is Premier Medical Supplies and Stores mentioned in the cheque . In this regard it is pertinent to refer to a recent decision of the Hon'ble Apex Court in ***Dhanasingh Prabhu vs. Chandrasekar & Another***[8] where the Hon'ble Supreme Court analysed the distinct features of partnership firm and company and held that even without impleading the partnership Firm the complaint under N.I. Act is maintainable against the partner. In this case the Firm was made accused in the complaint.

Therefore, the point rises about legal sanctity of the authorisation given by Mr Jai Gopal Banerjee being the Director of Premier Distribution Private Limited when the cheque was issued in favour of Premier Medical Supply and Stores and hence not in conformity with the provision of section 291 of the companies Act. The issue regarding the authorisation was assailed before the High court when previously the Appeal was filed. The Learned Co-ordinate Bench discarded the said point, decided that under section 141 of the Negotiable Instrument Act the complaint under section 138 can be made by the payee or the holder in due course of the cheque ,It was further held that anyone can set the criminal law in motion by filing a complaint of facts constituting of offence before a Magistrate entitled to take cognizance on the sole ground that the complainant was not competent to file the complaint .of

[8] 2025 INSC 831

the complainant and remanded back the matter to decide afresh. It was any employee of the company can represent company in the court proceeding and the relationship between Mr. Banerjee and the payee company and between Sri Gupta and payee company is well established .Therefore the point raised with regard to the authorisation being not considered by the learned trial court cannot be said to be either illegal or perverse .

15. Hence the above discussions left with the point for consideration whether after a prolong delay in disposal of the case itself would be the ground for not considering the appeal. The argument advanced by the Learned Senior Advocate that in the Memorandum of Appeal no such ground has been taken which could have been an adverse effect in the appeal and that speedy trial, early hearing and quick disposal are the sine qua non of criminal jurisprudence. It was strenuously argued that by the learned Senior Advocate that there is delay in disposal of appeal, which itself is a ground for not considering this appeal further, and in this regard relied upon the decision reported in ***In State of Punjab versus Ajaib Singh[9] in paragraph 6***,where it was held that:

> *"6. prior to adjudicating on the rival submissions, it appears necessary to preface it with few observations general in nature, but vital according to us. Although crime never dies nor there should be any sympathy for the criminal, yet human factors play an important role and reflect advertently or inadvertently in the decision-making process. In this appeal there is*

[9] (1995) 2 SCC 486

a time-lag of more than eighteen years from the date of incident and merely 15 years from the date of acquittal and its hearing. By any standard it is shocking. And this has been aggravated by still more shocking behaviour of the government which shall be adverted to later. Speedy trial, early hearing and quick disposal are the sine qua non of criminal jurisprudence. In some countries like England days are fixed statutorily for trial of cases. Keeping an accused in custody for a day more than it is necessary is constitutionally impermissible and violative of human dignity, freedom of life and liberty. The overcrowded court dockets, the phenomenal rise of public interest litigation, duty to ensure enforcement of fundamental rights, undoubtedly keeps this court under stress and strain. But that cannot be an excuse for keeping the sword of Damocles hanging on the accused for an indefinite period of time. It does not do any credit rather makes one sad. If the accused is not granted bill and serves out the sentence then the appeal is rendered academic for all practical purposes. And the right to establish innocence fades away in lack of enthusiasm and interest. If he is granted bail then long delay may give rise to humane considerations. Time heals the gravest scar and mitigates deepest injury suffered physically, mentally and emotionally. Therefore, if the courts have been rendered helpless and exasperating delay is threatening to eat away the system then the government may consider either to increase the strength to *clear the backlog or device some mechanism by which criminal appeals pending for more than reasonable time in higher courts should stand disposed of."*

16. It is further contended that precise and well vision ground in memorandum of appeal is imperative and which is absolutely absent in the instant appeal. This is a futile attempt to revive a case when on third occasion, the learned Magistrate passed such order of acquittal. In this regard relied upon the ***decision of Kapil Deo Shukla versus State of Uttar Pradesh***[10] in paragraph 4, it was observed that;

> *"4. Assuming that the High Court was correct in its appreciation of the legal position, even so, we must express our disapproval of any such practice as has been referred to in the judgement below. A memorandum of appeal is meant to be a succinct statement of the grounds upon which the appellant proposes to support the appeal. It is a notice to the court that such and such specific grounds are proposed to be urged on behalf of the appellant, as also a notice to the respondent that he should be ready to meet those specific grounds. A memorandum of appeal with a bald ground like the one quoted above, is of no help to any of the parties or to the court. It may have the merit of relieving the persons responsible for drawing up the grounds of appeal, of applying his mind to the judgement under appeal and its weak points, but this slight advantage, if it is so, is very much outweighed by the serious disadvantage to*

[10] AIR 1958 SC 121

the parties to the litigation and the court which is to hear the appeal."

17. In ***Gaya Din Versus Hanuman Prasad***[11] the Hon'ble Apex Court discussed the term "perverse" which means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularities. In this case the finding of the trial court about the final settlement and that there was no legal debt or liability appears to be perverse and hence interference by this court is necessary.

Conclusion

18. The learned Magistrate upon considering the judgement relied upon was of the view that when it is glaringly evident that the Respondents have admittedly issued the cheque for the specific amount in terms of the invoice raised mere delay in disposing the appeal would not entitle the accused persons to escape liability or be set scot free.

19. Therefore, this Court finds merit in the appeal. Hence, this CRA 99/2007 is hereby allowed. The judgement and order of acquittal passed by the Learned Magistrate is hereby set aside.

20. The order of conviction is passed against the Respondents under Section 138 of NI Act, 1881. However, the Respondents/Accused persons namely Bidyut Ranjan Dutta, Shikha Dutta and Moni Roy are sentenced only to fine which is of Rs. 3,00,000/- to be paid as compensation to the appellant and to be deposited in the trial court within 12 weeks from date failing which they will have to undergo the simple imprisonment for a period of 3 months.

[11] (2001) 1 SCC 501

21. Let a copy of this judgement along with the T.C.R. be sent to the concerned court for initiation and necessary action.

22. Urgent Photostat certified copies of this Judgment, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]